privilege of becoming a virual slave in the hands of his assignee, clearly outweighs the loss of the laborer's somewhat unsubstantial liberty to contract.

MATERIALMAN'S LIEN RECORDED AFTER ADJUDICATION IN BANKRUPTCY UNDER AMENDMENT OF 1910.—Prior to the amendment of 1910 it was the general rule in bankruptcy law that the trustee acquired only the interest and title of the bankrupt.[1] Accordingly, since under most of the recording acts the bankrupt's failure to record a chattel mortgage or the neglect by the vendor to file a contract of conditional sale did not render the transaction void as between the original parties, but merely postponed their rights to superior claims, it was valid as against the trustee.[2]

The amendment of 1910 to § 47a(2) was obviously enacted to remedy the situation created by the decision in *York Manufacturing Co.* v. *Cassell.*[3] This amendment, as to all property in the custody of the court, gives the trustee all the rights of a lien creditor, and as to other property the rights of a judgment creditor with execution returned unsatisfied.[4] It has been held, consequently, that a mortgage which has not been recorded by the bankrupt is invalid against the trustee,[5] and the same is true of a contract of conditional sale which has not been filed by the vendor.[6] But even under the amendment it cannot be said that the trustee in every case will prevail against parties asserting such claims unless the law of the State where the case arises vests the creditor with a superior equity,[7] and this evidently must

[1]3 Remington, Bankruptcy, 283; see Atchison, T. & S. F. Ry. *v.* Hurley (C. C. A. 1907) 153 Fed. 503, affirmed (1909) 213 U. S. 126. There is some authority, however, for the proposition that the filing of a petition in bankruptcy is in effect an attachment on the bankrupt's property. See Mueller *v.* Nugent (1902) 184 U. S. 1. An exception to the rule, of course, is where special provisions in the Act expressly give the trustee better rights. The provision in § 70e, for example, gives the trustee the right to avoid any transfer, such as a preference or unrecorded mortgage, which any creditor could have avoided. See Fourth St. Nat. Bank *v.* Millbourne Mills (C. C. A. 1909) 172 Fed. 177.

[2]Crucible Steel Co. *v.* Holt (C. C. A. 1909) 174 Fed. 127 (Chattel mortgage); Hewit *v.* Berlin Machine Works (1904) 194 U. S. 296; *In re* Great Western Mfg. Co. (C. C. A. 1907) 152 Fed. 123; but see Chesapeake Shoe Co. *v.* Seldner (C. C. A. 1903) 122 Fed. 593, which proceeds on the theory that the trustee represents the creditors, who, from the date of the filing of the petition in bankruptcy, are in effect attaching creditors. (Conditional sales.)

[3](1906) 201 U. S. 344. This decision crystallized the doctrine that, where as between the original parties a transaction was valid, the trustee was vested with no better rights than the bankrupt.

[4]Bankruptcy Act, § 47a(2), as amended 1910; Black, Bankruptcy, 819.

[5]*In re* Hammond (D. C. 1911) 188 Fed. 1020; see 13 Columbia Law Rev. 539.

[6]*In re* Bazemore (D. C. 1911) 189 Fed. 236; *In re* Williamsburg Knitting Mill (D. C. 1911) 190 Fed. 871.

[7]This was an acknowledged principle even before the passage of the amendment of 1910. See Chesapeake Shoe Co. *v.* Seldner, *supra; In re* Burke (D. C. 1909) 168 Fed. 994.

depend upon the construction placed by the state court upon its own law.[8]

In the recent case of *Hildreth Granite Co.* v. *City of Watervliet* (App. Div. 1914) 146 N. Y. Supp. 449, it appeared that a materialman, working under the bankrupt as sub-contractor, supplied materials to the defendant and filed his claim for a lien two days after the adjudication in bankruptcy of the contractor; this section as amended was invoked by the trustee in bankruptcy to no avail. Heretofore the decisions seem to have taken the same position,[9] but it was urged that the amendment of 1910 had changed the law so as to make such a lien void. The argument was advanced that upon adjudication in bankruptcy the trustee takes with the equity of a creditor with a lien and that in this case the trustee's lien was prior in time to that of the materialman.[10] In New York, the lien law provides merely that "a contractor, sub-contractor, * * * shall have a lien * * * from the time of filing a notice of such lien as prescribed."[11] If the lien is effected by the filing itself, then it might well be argued that the trustee in bankruptcy takes with the superior equity. But if this is to be construed as such statutes usually are, that the lien was created upon the furnishing of the materials or labor by the mechanic,[12] and that the requirement of filing is merely to protect against subsequent equities, then the conclusion cannot be avoided that the trustee, who takes a lien subsequent in time to that of the materialman, has the inferior equity. There is nothing in the New York Lien Law, moreover, which indicates that a failure to record makes such a lien void *per se* as to creditors of any kind; and this fortifies the conclusion reached, since the question properly resolves itself into a determination as to just where the prior equity lies.

It has been seen, furthermore, that the amendment of 1910 makes special provision for a case where the goods are not within the custody of the court. It seems that the legislative intent was to include within the classification of property in the custody of the court only tangible property such as could be levied upon by judicial process.[13] For the question arises in cases of property without the custody of the court only because the trustee in bankruptcy asserts a claim, a chose in action, against such property; and, if this claim were to be considered property within the possession of the court so as to place the property

[8]See 1 Loveland, Bankruptcy (4th ed.) §§ 441, 442. In this connection it is interesting to note that in a case arising in New York, the court held that the mortgagee under an unrecorded mortgage had a superior claim to the trustee in bankruptcy, *In re* New York Economical Printing Co. (C. C. A. 1901) 110 Fed. 514; but later, the Court of Appeals, in Skilton *v.* Codington (1906) 185 N. Y. 80, held that the former case had misconceived the law in New York. The federal court then changed its position accordingly. *In re* Gerstman (C. C. A. 1907) 157 Fed. 549.

[9]*In re* Georgia Handle Co. (C. C. A. 1901) 109 Fed. 632; *In re* Lillington Lumber Co. (D. C. 1904) 132 Fed. 886.

[10]In a somewhat similar case decided after the enactment of the amendment of 1910, the same result as in the principal case was reached and no reference was made to § 47a(2). *In re* McAllister-Newgord Co. (D. C. 1912) 193 Fed. 265.

[11]New York Lien Law, § 3.

[12]See *In re* Georgia Handle Co., *supra; In re* West Norfolk Lumber Co. (D. C. 1902) 112 Fed. 759.

[13]*Cf. In re* Farrell (C. C. A. 1912) 201 Fed. 338.

itself for the purposes of the amendment within the custody of the court, it would seem that scarcely an instance could arise under the operation of such a rule where such a thing as property not within the custody of the court would exist. That such would be the result is adequately illustrated in the application of this theory to the principal case, where the property was in the possession of a third person, the defendant, and the bankrupt, as well as the plaintiff, had merely a claim against it. Clearly then, since the amendment gives the trustee in such a case only the interest of a judgment creditor with execution returned unsatisfied, the plaintiff's lien should prevail.

STATUTORY LIABILITY OF STOCKHOLDERS FOR INTEREST.—It has been frequently stated that, as a general rule, after the property of an insolvent corporation has passed into the hands of a receiver, interest is no longer allowed to accrue on the claims against the fund.[1] The truth of this statement is not due to the obligations having in any way lost their interest-bearing quality, but results from the purely practical consideration that in the case of receiverships the assets usually are inadequate to satisfy all claims. As was recently pointed out by the Supreme Court,[2] it would be manifestly absurd to contemplate that by securing the appointment of a receiver, the debtor or trustee could stop the running of interest on claims of the highest dignity. Of course, interest will never be computed on preferred claims to the prejudice of the claims of unpreferred creditors,[3] and indeed, whenever the funds are insufficient, it will not be allowed to accrue after the property passes *in custodiam legis*.[4] On the other hand, it is equally well recognized that where the assets of an insolvent corporation, either through good fortune or good management, prove ample to meet all its obligations in full, interest as well as principal will be paid.[5]

It is quite obvious that where the statutory liability of the stockholders of a corporation is unlimited, each being bound to pay his proportionate share of the entire corporate debt, their liability is commensurate with that of the corporation, and hence properly includes interest, which merely compensates creditors for unjust delay and is as much a part of the debt as the principal itself.[6] Furthermore, as was held in the recent case of *Lamar* v. *Taylor* (Ga. 1914) 80 S. E. 1085, even where the liability of the stockholders is limited to a fixed amount, interest will be added to the principal of the debt provided that the total does not exceed the statutory limit. In two decisions which are frequently cited as being in conflict with this doctrine, the view was expressed that the shareholder's liability did not properly ex-

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[1]Thomas *v.* Western Car Co. (1893) 149 U. S. 95; Tredegar Co. *v.* Seaboard Air Line Ry. (C. C. A. 1910) 183 Fed. 289.

[2]American Iron & Steel Mfg. Co. *v.* Seaboard Air Line Ry. (Supreme Court, Oct. Term, 1914) No. 233. Not yet reported.

[3]See 3 Columbia Law Rev. 120.

[4]N. Y. Security & Trust Co. *v.* Lombard Investment Co. (C. C. 1896) 73 Fed. 537.

[5]See 12 Columbia Law Rev. 268; American Iron & Steel Mfg. Co. *v.* Seaboard Air Line Ry., *supra*.

[6]Zang *v.* Wyant (1898) 25 Colo. 551; Wells, Fargo & Co. *v.* Enright (1900) 127 Cal. 669.